

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HEALTH

In the Matter of Lake Shore Inn,
Survey Completed 06/03/05

RECOMMENDED DECISION

The above matter was the subject of an informal dispute resolution meeting conducted by Administrative Law Judge Beverly Jones Heydinger on October 17, 2005 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The meeting concluded on that date.

Appearances: Marci Martinson and Mary Cahill, Facility and Provider Compliance Division, Department of Health, 1645 Energy Park Drive, Suite 300, St. Paul, MN 55108-2970. Peter Madel III, Administrator, Lake Shore Inn Nursing Home, 108 8th Street NW, Waseca, MN 56093

NOTICE

Under Minn. Stat. § 144A.10, subd. 16(d)(6) this recommended decision is not binding on the Commissioner of Health. Under Department of Health Information Bulletin 04-07, the Commissioner must mail a final decision to the facility indicating whether or not the Commissioner accepts or rejects the recommended decision of the Administrative Law Judge within 10 calendar days of receipt of this recommended decision.

Based upon the exhibits submitted and the arguments made, and for the reasons set out in the Memorandum which follows, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That citation F-214 for Residents 19, 20, 21, 22 and 23 is supported.

That citation F-272 for Resident 2 is supported.

Dated this 27th day of October, 2005.

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Citation F-241

The Department's survey includes evaluation of "Quality of Life" for the residents, including "Dignity." The Guidance to Surveyors states that: "The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality."¹ This citation was issued based on a group interview held with several residents. At the interview, five residents reported that the facility's staff had failed to respond to their call lights in a timely way.

"Guidelines" issued to surveyors offer a number of examples related to maintaining and enhancing self-esteem and self-worth, but none have any direct application to the facts presented here. However, the surveyors are also directed to observe whether the staff show respect for residents, interact appropriately with the residents, pay attention to them as individuals, and respond to residents' requests for assistance in a timely manner.

Interviews are included in the survey process to collect information about whether the facility's practices are in accordance with its policies. The "Principles of Documentation" for interviews states: "To the greatest extent possible, the surveyor verifies the information obtained from interview through observation or record review. In the absence of other objective validation of information, information may also be confirmed/verified through multiple interview sources."²

At the group interview, five residents reported that their call lights were not answered in a timely manner, and that for four of the seven residents, the slow response led to an incident of incontinence. One of the residents stated that she was reprimanded by a staff person for her incontinence. The same five residents reported that it was not unusual for staff to respond to the call light but then to turn it off and state that he or she would return in a few minutes. Often the staff member did not return promptly and the resident would have to use the call light again.

There was no evidence that a surveyor observed a delay in responding to a call light or observed a staff member turning out the call light without addressing the caller's concern. The Department acknowledges this, although it contends that staff members ordinarily respond to residents quite quickly when the surveyor is present. It also cites the minutes from two resident meetings when residents raised a concern with slow response time. At the meeting on February 9, 2005, one resident was concerned about having to wait too long when she requested help.³ On January 19, 2004, one resident was concerned that she had been left on the commode too long and that her call light was not within reach.⁴ However, in neither the minutes from the meetings nor during the interview was it clear how long a resident had waited for a response.

¹ Ex. B1.

² Ex. A12.

³ Ex. G106.

⁴ Ex. G107.

The notes from the Quality of Life Assessment Group Interview reflect that the residents' responses to questions about their quality of life were generally quite positive. However, the marked exception reflected in the notes is the residents' concern that the call lights were not answered promptly or that the staff would come in, turn off the call light and promise to return, but not return promptly.

The Facility objects to a deficiency that is based solely on anecdotal, general complaints. There are no established standards for the promptness of response to call lights. Thus, the Facility asserts, there is no standard that was violated. In addition, the Facility points out that four out of the five persons who joined in this complaint were not reliable reporters. Resident #21 was irritable, impatient, negative, suffered from depression and chronic anxiety, and refused to use the urinal, bedpan or commode. Resident #22 had impaired decision-making and memory problems. She was diagnosed with dementia, depression and agitation. Resident #20 had short term memory problems, and some activities consistent with dementia. All five of the residents were either incontinent or required extensive assistance with toileting.

The Facility notes that it has not had complaints about staff responding slowly to call lights, either at the monthly resident meetings or in interviews conducted each month by an independent Quality Assurance Consultant during the year prior to the survey. It also offered reports tracking the average call light response times.⁵

The Department did not use the results of the interview to issue a citation for poor incontinence care, but rather under the heading of "dignity." Thus, it is less critical what the actual response time was to the call lights than the perception of these individuals that their needs were not addressed promptly. One of the points that surveyors must attempt to measure is whether residents feel that the staff responds promptly to their requests for assistance. Toileting is intensely personal and all of these residents need total or extensive assistance. It is not surprising that the speed with which staff members respond to their call bells is very important to them, and that, assuming the Facility is correct that the average response time is six minutes, that may not seem adequate to them. It is their sense of dignity and respect for their needs that is covered by this part of the survey rather than a measurable, quantifiable care practice. Although four of them may have some cognitive impairment, their overall responses to the interview questions seem measured, responsive, and largely positive. The surveyor could hear and observe the residents who spoke and obviously believed that this matter concerned them. Thus, there is an adequate basis for the citation.

Citation F-272.

The Facility must assure that it conducts a comprehensive assessment of each of its residents. That assessment is crucial to developing the resident's care plan, and is intended to identify all of the care that the resident needs.⁶ This citation was issued because the Department concluded that the Facility had not performed an adequate

⁵ Exs. E10 and E11.

⁶ Ex. H2.

assessment of Resident #2's incontinence. The file included the Minimum Data Set (MDS) dated 3/17/05. The MDS is Minnesota's version of the "Resident Assessment Instrument" (RAI) required by the Center for Medicare and Medicaid Services (CMS) and must include an assessment of continence. Additional information is gathered as needed on a Resident Assistance Protocol (RAP).⁷ The MDS reflected that the resident had inadequate control of bladder with multiple daily episodes of incontinence. However, the Department concluded that the information on the MDS, including the RAP, was insufficient without an additional assessment of the resident's bladder and bowel control. Significantly, Resident #2 had severely impaired cognitive skills, could not speak, and required staff assistance to use the toilet.⁸

The Facility maintains that the MDS is the required assessment. The law requires that the Facility conduct the comprehensive assessment using the RAI specified by the State, which is the MDS in Minnesota. The Facility concedes that to reach the conclusions necessary to complete the MDS, additional instruments may be needed and that, in fact, it used another instrument to assess this resident, although that documentation was not in the chart. Since the results were incorporated into the MDS, and the MDS was an assessment, the Facility contends that the citation is not justified.

The Department refers to the CMS's RAI Version 2.0 Manual.⁹ It states, inter alia,

Completion of the MDS does not remove the facility's responsibility to document a more detailed assessment of particular issues of relevance for the resident.... Nursing facilities are required to document the resident's care and response to care during the course of the stay, and it is expected that this documentation would chronicle, support and be consistent with the findings of each MDS assessment. Always keep in mind that government requirements are not the only or even the major reason for clinical documentation. The MDS has simply codified some documentation requirements into a standard format.... Clinical documentation that contributes to identification and communication of residents' problems, needs and strengths, that monitors their condition on an on-going basis, and that records treatment and response to treatment, is a matter of good clinical practice and is an expectation of trained and licensed health care professionals.

The Department expects that a RAP for urinary incontinence (UI) should be completed to ascertain the cause, chronicity and type of UI. Since the UI RAP does not include an evaluation of daily voiding habits, the Department expects that bladder records be completed and reviewed.¹⁰ The Department's key concern for Resident #2 is that the times for toileting were set upon rising, between meals, at hour of sleep, and

⁷ Ex. H2.

⁸ Ex. I6.

⁹ Ex. I54.

¹⁰ Ex. H18.

as needed, without documenting a basis for the selected times. There was no information about bladder function, toileting behavior or nursing notes to support the selected times.

The Facility asserts that there was missing documentation, but that documentation was not required by any regulation. It believes that the plan of care reflects the Facility's MDS and RAP for resident and that it fully complied with the applicable regulation.

Although the Facility's argument has some merit, in this instance the Facility developed a care plan with identified toileting times without being able to demonstrate how those specific times were selected. Without an appropriate assessment, one cannot determine if the care plan is adequate to meet the Resident's needs. The nursing assistant's statement that the Resident was "usually wet" at around 7:30 p.m., and her uncertainty about the last time the resident had been checked, support the Department's concern that the care plan was not based on a complete assessment. For this reason, the Department has adequately supported the citation.

B.J.H.